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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/850,306	05/07/2001	Robert D. Matthias	59639	2173

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ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A.  
1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE  
P.O. BOX 3791  
ORLANDO, FL 32802-3791

EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/850,306

**Applicant(s)**

MATTHIAS ET AL.

**Examiner**

Alexandra K Pechhold

**Art Unit**

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 12-14, 17, and 18 is/are rejected.
- 7) ☒ Claim(s) 2,3,10,11,15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-9, 12-14, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by McKinnon (US 5,527,129).

Regarding claims 1 and 14, McKinnon discloses a curb forming machine comprising a frame seen as chassis frame (11), a hopper seen as hopper (17) having an upper section and lower section seen as upper hopper segment (17b) and lower hopper segment (17a), and a curb extrusions mold adjacent the lower hopper section seen as compacting surface (20). A plunger is disclosed as elliptical orbit compacting element (21) driven by a crank arm (28) attached to output shaft (30) of gear box (31) attached to the drive shaft of motor (32) attached to frame (11) (Col 6, lines 53-56). The element (21) has forward, upward, and rearward positions since McKinnon states that the compacting surface (20) moves approximately 3 inches forward and backward, and from  $\frac{1}{2}$ - $\frac{5}{8}$  inches up and down along the elliptical orbit path (Col 6, lines 64-67). The compacting member (21) thus attached moves back and forth in an elliptical orbit to draw, drop and receive material from the bottom outlet of the hopper and force and lift the material rearward into and through the rear opening of the compaction chamber (Col 6, lines 67-68, Col 7, lines 1-3 and claim 1).

Regarding claim 4, McKinnon discloses that the elliptical orbit compacting element (21) driven by a crank arm (28) attached to output shaft (30) of gear box (31) attached to the drive shaft (not shown) of motor (32) attached to frame (11) (Col 6, lines 53-56).

Regarding claims 5, 12, and 17, McKinnon discloses an output shaft (30) of gear box (31) in column 6, lines 53-56. The crank arm (28), also described in column 6, lines 35-56, can be viewed as an eccentric arm, which rotatably connects the elliptical orbit compacting element (21) to the output shaft (30) as shown in Fig. 6.

Regarding claims 6 and 18, McKinnon illustrates a first shaft, seen as output shaft (30) in Fig. 6, which McKinnon states is indirectly connected attached to frame (11) (Col 6, lines 53-56). A second shaft can be viewed as the shaft connecting the end of connecting bar (33) to guide roller (35) in Fig. 6. A plurality of rocker arms pivotally connecting the first and second shafts can be seen as the connecting bar (33) and crank arm (28) in Fig. 6.

Regarding claims 7 and 13, McKinnon discloses a plurality of wheels (12, 14) in column 6, lines 14-22. A steering mechanism is discloses as steering wheel (12) and steering handle (13b) to assist an operator in controlling and aligning the curb forming machine (10) (Col 6, lines 9-25).

Regarding claim 8, McKinnon discloses the limitations of the claimed invention as discussed in reference to claims 1, 4, and 6 above.

Regarding claim 9, McKinnon discloses the limitations of the claimed invention as discussed in reference to claim 1 above.

***Allowable Subject Matter***

3. Claims 2, 3, 10, 11, 15, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. James III (US 3,733,140), James III (US 3,733,141), Vlastic (US 3,585,911), and May (US 4,566,825) disclose curb forming machines. Thomas (US 4,936,763), Butcher (US 2,932,875), Casimaty et al (US 6,171,019B1), Taylor, Jr. (US 4,384,806), and Eggleton (US 4,310,293) disclose concrete moulding apparatuses.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

  
Thomas B. Will  
Supervisory Patent Examiner  
Group 3600

AKP  
1/15/01